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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 14 November 1997 from the Permanent Representative of
Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith the official response of the Government of the Republic of Iraq to the interim report on the situation of human rights in Iraq submitted by the Special Rapporteur of the Commission on Human Rights to the General Assembly at its fifty-second session (A/52/476).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 112 (c).

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative



ANNEX

Response of the Government of Iraq to the interim report on the
situation of human rights in Iraq submitted by the Special
Rapporteur of the Commission on Human Rights to the General
Assembly at its fifty-second session (A/52/476)

It is perhaps axiomatic that human rights cannot be discussed in isolation from the political climate, economic and social conditions and considerations of time and place. They cannot be considered in the same frame of mind and with the same objectivity in time of war as in time of peace. Moreover, cultural and religious considerations have a role to play in this connection.

In regard to such instrumentalities of the United Nations as the work of the special rapporteurs on human rights who concern themselves with situations in particular countries, it is a familiar concept that they have the goal of improving and strengthening human rights in the country concerned in accordance with the guidelines laid down by the United Nations and particularly those endorsed by the General Assembly in a whole series of resolutions. In its resolution 51/105 of 12 December 1996, for example, the Assembly reaffirms that the promotion of all human rights should be guided by the principles of non-selectivity, impartiality and objectivity and reiterates that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status. Regrettably, however, we find a deliberate affront to these principles and a failure to comply with them on the part of this Special Rapporteur, who has used the mandate assigned to him to pillory the Government of Iraq. Not only has he done this, but he has also used his mandate to provide himself with a rostrum from which to call for a change of political system in Iraq. He thus claims that it is only possible to bring about a change in the human rights situation in Iraq by bringing about a radical change in the political and legal system in Iraq, and this constitutes a flagrant violation of the right of the people of Iraq to self-determination as laid down in common article 1 of the International Covenants on Human Rights. Thence it is clear that van der Stoep has departed from his ostensible tasks and has become a vehicle for the achievement of political objectives that are incompatible with the peremptory norms of human rights as exemplified by the right of peoples freely to choose their political system without external interference.

Such a perversion of a special rapporteur's functions explains all of van der Stoep's practices, involving as they do prior condemnation and the abandonment of objectivity and impartiality in the collection, dissemination and analysis of information. He has adopted a biased approach to addressing the human rights situation in Iraq, not with a view to improving it and cooperating with the country concerned to that end but of advocating the replacement of the legitimate regime in Iraq at the urging of certain parties seeking to achieve political objectives that serve the interests of well-known States.

In paragraph 2 of his report, van der Stoep calls, *inter alia*, for the abrogation of Revolution Command Council Decree 840 of 1986 on the grounds that

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it constitutes a violation of freedom of opinion and penalizes free expression. In this connection, the Government of the Republic of Iraq feels obliged to clear up an important legal issue relating to the allegations that this decree prescribes the death penalty for criticism of the President of the Republic. Such a claim either involves legal sophistry or a lack of precision in interpreting the decree, which is based on an amendment to paragraph 1 of article 225 of the Penal Code.

The decree provides for a penalty of life imprisonment for insulting the President of the Republic in a public manner. Accordingly, it is a precondition of the application of such a sentence that the perpetrator should insult the President of the Republic, and not merely criticize him as these allegations normally state. In criminal law, the difference in meaning between criticism and insult is great. Moreover, the application of such a sentence also requires that the perpetrator should offer the insult in a public manner, namely in one of the ways set forth in paragraph 3 of article 19 of the Penal Code. These involve the commission of a crime in a public thoroughfare, in a public forum, by means of a mechanical device or through the media of dissemination.

The decree then provides for the death penalty for the said act, subject to the conditions mentioned, where it is committed with intent to arouse public opinion against authority. In such an event, the offence assumes a different criminal character and is regarded as a crime that is prejudicial to internal State security. This is because its goal is not merely to offer insult and because it has the ultimate intent of arousing public opinion against authority by inciting the overthrow of the system of government or fomenting conflict between sects or religions. The moral basis on which the Penal Code relies in thus penalizing insult to the President of the Republic is also used by article 227 of the Code when it provides for the punishment by imprisonment of whoever commits the offence of insulting the head of State of any country in the world or the head of any international organization and of whoever commits the offence of insulting the flag or emblem of such a country or international organization.

In paragraph 5 of the report, the Special Rapporteur alleges an absence of cooperation on the part of the Government of Iraq and states that he has received information from other, non-Iraqi, governmental and non-governmental sources. He thus explicitly acknowledges that he is choosing to ignore the official responses that the Government of Iraq has made a point of submitting to all of his reports, whether to the Commission on Human Rights or the United Nations General Assembly, since 1992. There is also, moreover, the cooperation the Government of Iraq has extended to the special rapporteurs on various specific topics. We have to question, in this connection, the credibility of the information van der Stoep obtains from these non-Iraqi sources and whether it is possible to regard it as official, documented information on Iraq that can be relied on and given currency.

The allegations made in paragraphs 6 and 7 of the report concerning the situation in northern Iraq and the issue of the missing Kuwaitis are the same as those made in the Special Rapporteur's previous report, and Iraq responded to them in sufficient detail in the report it submitted to the United Nations General Assembly at its fifty-second session in 1997.

With the accusation made in paragraphs 8 and 9 that the leadership of Iraq is continuing to violate human rights, van der Stoep removes all doubt that he proceeds on the basis of a predetermined attitude of hostility towards the national regime in Iraq. He is thereby placing himself at the service of a transparent conspiracy led by the United States of America to overthrow that regime and impose particular political choices on the people of Iraq. This confirms his complete abandonment of the terms of his mandate and the fact that he is interfering in the internal affairs of an independent, sovereign country that is a Member of the United Nations.

His allegation with regard to the legal system and the charge that the exercise of legislative, executive and judicial powers is not in conformity with the international instruments are absolutely unacceptable and constitute blatant interference in purely internal affairs and the framing of charges in a random and biased manner. An objective and more than cursory reading of the Constitution of Iraq would show that it prescribes the operation of the institutions in question meticulously. The laws in effect pursuant to the Constitution then regulate them in such a way as to ensure that they are independent of each other and perform their functions in a uniform manner. In this regard, reference may be made to the responses of Iraq as contained in documents A/49/394, A/50/471 and A/C.3/51/3.

The repeated allegations that there are Iraqi military concentrations in areas adjacent to the northern governorates are a desperate attempt to distract attention from the true state of affairs in this area, that is to say from the bloody conflicts being waged by the warring Kurdish factions among themselves that occur as a result of the continuing foreign intervention in the area. There are also the repeated Turkish incursions that have been taking place since 1991 and are still continuing, as well as the artillery and aerial bombardments of civilian areas of northern Iraq that accompany them and cause casualties among innocent civilians and damage to property. In October 1997 Turkish aircraft bombarded two hills in the Shaqlawah area in northern Irbil Governorate for one full hour using internationally prohibited napalm and cluster bombs. The Turkish Government has also established a security zone inside Iraqi territory in violation of Iraq's sovereignty and independence, and this has been condemned and censured by most of the world's countries. Van der Stoep, however, seeks to ignore an anomalous and abnormal situation that threatens the security and stability of the entire region and of Iraq in particular, and he does not manage to make even a passing reference to it. Instead, he proceeds to focus his efforts on giving currency to the false allegation that Iraq has concentrated its forces inside its own territory in northern Iraq. Even if this were true, it would be quite normal. Iraq has the legitimate right, after all, to deploy its forces inside its own territory and within its international boundaries.

The allegations made in paragraphs 12 to 15 and in paragraph 18 that individuals and families from the villages of Umm al-Ghizlan, Bani Sa'id and Dawayah were arrested, executed and tortured in April 1997 are untrue and absolutely groundless. No precise information is given whose truth can be established, and none of these incidents ever happened, either in these areas or elsewhere. The true state of affairs with respect to what is happening is that the authorities concerned are engaged in legal investigations of certain persons

accused or convicted of committing criminal offenses such as murder, armed robbery and highway robbery in the areas in question. It is normal that the State should carry out its functions and fulfil its obligation to its citizens to protect their security, safety and property.

In paragraph 16 of the report, van der Stoel alleges that there was an attempted coup d'état and that a number of persons alleged to have been involved in it were executed. We can affirm that there was no such incident and that what van der Stoel reports is a mere fabrication and a figment of his imagination.

In the section of the report on freedom of opinion and expression (paragraphs 22 and 23), van der Stoel repeats the statements made in his previous report. In this connection, the Government of Iraq has nothing to add to what it said on this subject in its last detailed response.

The allegation made in paragraph 19 concerning the detention and torture of 25 families in the village of Al-Fajr is untrue and absolutely groundless. The Governor in question issued no such orders for the arrest or detention of any family as are alleged by van der Stoel.

Paragraphs 24 to 33, in the section headed "Forced displacement", contain distortions of the facts and blatant and deliberate falsifications. In reality, the population displacements in the Dohuk, Irbil and Sulaymaniyah governorates took place, just as they are continuing to take place, because of the fighting for control of territory that breaks out from time to time among the warring Kurdish factions in the area of Iraqi Kurdistan. The most recent incidents of fighting among these groups are those that began in October and November 1997 and are still going on, and there are also the military assaults being launched by Turkey from time to time. This anomalous situation has been an inevitable result of foreign interference in the area, particularly that of the United States and the United Kingdom, and of the protection and support provided to these warring factions after the Government of the Republic of Iraq was obliged to withdraw its civil and military administration from the area in 1991.

In a number of its previous responses the Government of Iraq explained in minute detail the true nature of the situation in this area and called attention to the constant interference by the United States in order to impede or halt any attempt at a national dialogue between the Government of Iraq and the Kurdish groups with a view to resolving a situation in which innocent civilian citizens are the victims. To hold the Government of Iraq responsible for the displacement of citizens in these areas is therefore absolutely unacceptable, given that this is something that is beyond the control of the central Government.

Van der Stoel alleges that the Government of Iraq is making demographic changes in the area of Kirkuk and Khanaqin. We should like to stress that there have been no compulsory resettlements carried out by expelling Kurds and Turkomans from the cities of Kirkuk and Khanaqin. The truth of the matter is that during the Iraq-Iran war a number of families were resettled because they were living in border areas that became a theatre of military operations at that time. It thus became necessary to relocate civilian inhabitants from the

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border-strip regions as a precaution and in order to ensure their safety, and they were compensated for their property in accordance with the law. We should like in this connection to refer to Iraq's response contained in document A/49/394.

The allegations concerning the confiscation of extensive areas of agricultural land in the same governorate are absolutely groundless. There was no confiscation of any agricultural land in that governorate.

In paragraphs 37 and 38 of the report, in the section headed "The rights to food and health care", the Special Rapporteur expatiates on the nutritional situation in Iraq and cites figures published by international organizations such as the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO). We should like in this connection to state that the most recent official figures indicate that between January and September 1997 the total number of childhood deaths caused by the blanket economic embargo imposed on Iraq was 890,628 and that the causes were such conditions as malnutrition, diarrhoea, heart disease, malignant neoplasia, kidney disease and diabetes. The infant mortality rate has reached 93 per 1,000 live births.

In paragraphs 39 to 42, the Special Rapporteur expresses satisfaction with the manner in which the memorandum of understanding between Iraq and the United Nations Secretariat is being implemented and with the facilities provided by the Government of Iraq in this respect. Then, in paragraph 43, he again reverts to expressing concern that the geographical observers working in Iraq in accordance with the memorandum of understanding are not based permanently throughout the country with free access to any location without prior notification so as to enhance the credibility of the information gathered. In this connection, the Government of Iraq rejects outright any interference by the Special Rapporteur in the food distribution mechanism and the plan approved under the memorandum of understanding, which is beyond the scope of his mandate. In the first place, he has no right to amend the memorandum and, in the second place, there is a full complement of specialist staff at the United Nations that is currently engaged in implementing the memorandum in cooperation with the Government of Iraq. Iraq would like to point out that the memorandum of understanding is an exceptional and temporary measure, as stated in document S/1996/356 itself, and that it was concluded in order to mitigate the suffering of the Iraqi people caused by the blanket embargo imposed on it in 1990. It is not possible, under any circumstances, to consider it as a substitute for the implementation of paragraph 22 of section C of resolution 687 (1990). Accordingly, it is neither logical nor reasonable for geographical observers monitoring the implementation of the memorandum of understanding, which is temporary in nature, to be deployed on a permanent basis.

The question of granting complete freedom of movement to the geographical observers, dealt with in paragraphs 43, 44 and 45 of the report, should not have been mentioned at all. In paragraphs 39 and 40 of his report of 2 June 1997 pursuant to paragraph 11 of resolution 986 (1995) (S/1997/419), the Secretary-General of the United Nations states that the Government of Iraq has cooperated fully in according United Nations personnel the requisite freedom of movement and in permitting unrestricted travel throughout the country, satisfactory

access to important information and contact with officials in warehouses and mills and with distribution agents as well as in providing other facilities.

The conclusions reached and the spurious and biased information purveyed by van der Stoep in paragraphs 44 and 45 are absolutely groundless, and no such complaints have been made to the Iraqi authorities. Far from this being the case, in his aforesaid report the Secretary-General of the United Nations commends the efforts made by the Government of Iraq and the cooperation it has extended.

The Government of the Republic of Iraq would like to make some observations on the conduct of the geographical observers. The functions assigned to them in implementing the memorandum of understanding are confined to verifying and reporting the fairness of the distribution of the goods imported in accordance with the memorandum and to monitoring the storage of goods, whether foodstuffs, medicines or other humanitarian items. Many of the observers, however, often overstep their functions and interfere in the private affairs of citizens by asking them questions that bear no relation to the tasks assigned to them. A head of household may be asked, for example, whether the house in which the family lives is owned or rented. Sometimes questions are asked about the educational attainment of members of the household, years of service with State agencies, salaries and working hours, the water and electricity situation and the cause of death of the head of household and whether he died on active military service or of natural causes. One observer (an Italian national) went so far as to request approval from the Ministry of Foreign Affairs to adopt an Iraqi family on the grounds that it was poor. This is to be regarded as interference not only in the affairs of that family but also in the relationship between the Government of Iraq and its citizens. At the same time, some observers violate the laws and regulations by renting private houses and failing to stay in the hotels designated for the accommodation of officials working under the memorandum of understanding. Most such practices of the geographical observers have been reported orally or in writing to the Office of the United Nations Coordinator.

With regard to the allegations made in paragraphs 46 and 47 concerning the problematic nature of the ration-card system, we should like to reaffirm that this subject is of no concern to the Special Rapporteur and is an attempt on his part to intrude himself into matters that fall outside the scope of his mandate in order to interfere in the internal affairs of Iraq and, indeed, in the work of another United Nations body. Van der Stoep's pronouncements involve a great deal of exaggeration and imprecision, and the working procedures followed by the Government of Iraq have the goal of preventing multiple registration and manipulation. The allegation that there are thousands of people who have been refused ration cards is groundless, and not a single case has been recorded where the right to register has been denied to any citizen. The geographical observers have mentioned no such allegations in the reports they submit in the light of their unrestricted field visits. The Government of Iraq has, on the contrary, been meticulous in ensuring that all citizens should obtain their allotted rations without distinction or discrimination of any kind. This also applies to Iraqi citizens in the northern, central and southern regions, including the marshland region.

In paragraphs 52 to 54 of his report, van der Stoep sets forth in detail the merits of the memorandum of understanding and what it provides to citizens in terms of calories. He seeks to ignore, however, the fact that people need not only calories but also medication, health care and electric power. Had he been fair and had he been committed to the human rights of the Iraqi people, he could have mentioned the fact that, on the grounds that they could be dual-use items, the Security Council Committee established by resolution 661 (1990) had rejected contracts for the supply of ambulances to the Iraqi Ministry of Health and for truck tyres to improve the operation of the trucks that carry the goods imported under the memorandum of understanding. The Committee has rejected many contracts relating to the electricity sector. We should like, in this connection, to state that, prior to 1990, the Government of Iraq had allocated 360 million dollars a year to the maintenance of electric power stations. The amount under the memorandum of understanding is only 10 per cent of that figure, namely 36 million dollars, and of this meagre sum only 5 per cent has been spent.

In urging, in paragraph 61, the deployment of human rights monitors in Iraq in the same manner as the geographical observers operating in the framework of the memorandum of understanding, the Special Rapporteur is guilty of conflating two different things in an unacceptable manner. The function of the United Nations geographical observers is defined in the memorandum of understanding, whereas the underlying purpose of assigning human rights monitors is well known and infringes on the security, sovereignty and independence of Iraq. The Government of Iraq stated its position of rejecting this proposal outright in document A/C.3/47/2.

From an examination of the report, it is clear beyond any doubt that the Special Rapporteur has had no regard for the true nature of human rights as a subject. One of the most elementary rules for any study of such subjects is that it should avoid politicization, denigration and abuse of the mandate assigned to the international personage supposedly selected with care with a view to ensuring the achievement of the goals desired from the tasks assigned. From our experience with him since 1992, we can say that van der Stoep insists on interfering in the internal affairs of Iraq and in attempting to impose particular political choices on its people that serve the schemes of the United States. This has caused him completely to abandon the objective of his task, which is to promote human rights in Iraq.

The judgements made and the proposals formulated in all of his reports, the most recent being that under consideration, indicate conclusively that he completely ignores the objectively exceptional circumstances created by the 30-Power aggression against Iraq in 1991 and the blanket embargo imposed on it in August 1990 as well as the adverse impact they have had on all human rights in Iraq without exception. This did draw the attention of the Subcommittee on Prevention of Discrimination and Protection of Minorities, and, in its decision entitled "The humanitarian situation in Iraq" and its resolution entitled "The adverse impact of economic sanctions on the enjoyment of human rights", it stressed that such measures should be of limited duration. None of this, however, has captured the attention of the Special Rapporteur and he has, on the contrary, been motivated to persist in demanding a change of political system in

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Iraq. This reveals the intentions and motives of his tendentious campaign against Iraq as part of the conspiratorial scheme against it.

The core of the problem resides in the fact that all human rights have been diminished because of the maintenance of the blanket embargo imposed on Iraq. If the Special Rapporteur had a minimum of fairness, objectivity and concern, he would have demanded that the embargo be lifted, because that is the only way to ensure that the Iraqi people can enjoy all of its rights. No two people can disagree that giving effect to human rights and their effective strengthening are closely linked with improving the economic situation in general.
